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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

2009 MAR 12 P 12:48

KRISTIN K. MAYES, Chairman  
GARY PIERCE  
PAUL NEWMAN  
SANDRA D. KENNEDY  
BOB STUMP

AZ CORP COMMISSION  
DOCKET CONTROL

In the matter of:

DOCKET NO. S-20660A-09-0107

RADICAL BUNNY, L.L.C., an Arizona  
limited liability company,

HORIZON PARTNERS, L.L.C., an Arizona  
limited liability company,

TOM HIRSCH (aka TOMAS N. HIRSCH)  
and DIANE ROSE HIRSCH, husband and  
wife,

BERTA FRIEDMAN. WALDER (aka  
BUNNY WALDER), a married person,

HOWARD EVAN WALDER, a married  
person,

HARISH PANNALAL SHAH and  
MADHAVI H. SHAH, husband and wife,

Respondents.

**NOTICE OF OPPORTUNITY FOR  
HEARING REGARDING PROPOSED  
ORDER TO CEASE AND DESIST, ORDER  
FOR RESTITUTION, FOR  
ADMINISTRATIVE PENALTIES, AND FOR  
OTHER AFFIRMATIVE ACTION**

Arizona Corporation Commission

DOCKETED

MAR 12 2009

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**NOTICE: EACH RESPONDENT HAS 10 DAYS TO REQUEST A HEARING**

**EACH RESPONDENT HAS 30 DAYS TO FILE AN ANSWER**

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") alleges that respondents RADICAL BUNNY, L.L.C., HORIZON PARTNERS, L.L.C., TOM HIRSCH (aka TOMAS N. HIRSCH), BERTA FRIEDMAN WALDER (aka BUNNY WALDER), HOWARD EVAN WALDER, and HARISH PANNALAL SHAH have engaged in acts, practices, and transactions that constitute violations of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act").

## JURISDICTION

## II.

8. HOWARD EVAN WALDER (“H. WALDER”) is a married person who, at all

1 times relevant hereto, resided in Maricopa County, Arizona.

2 9. HARISH PANNALAL SHAH ("SHAH") is a married person who, at all times  
3 relevant hereto, resided in Maricopa County, Arizona.

4 10. RADICAL BUNNY, HORIZON PARTNERS, HIRSCH, B. WALDER, H.  
5 WALDER, and SHAH may be referred to collectively as "Respondents."

6 11. DIANE ROSE HIRSCH was at all relevant times the spouse of Respondent  
7 HIRSCH.

8 12. MADHAVI H. SHAH was at all relevant times the spouse of Respondent SHAH.

9 13. DIANE ROSE HIRSCH and MADHAVI H. SHAH may be referred to collectively  
10 as "Respondent Spouses."

11 14. Respondent Spouses are joined in this action under A.R.S. § 44-2031(C) solely for  
12 purposes of determining the liability of the marital communities.

13 15. At all times relevant, Respondents HIRSCH, B. WALDER, H. WALDER and  
14 SHAH were acting for their own benefit and for the benefit or in furtherance of their respective and  
15 respective Respondent Spouse's marital communities.

### 16 III.

### 17 FACTS

18 16. Mortgages Ltd. ("MLtd") was incorporated on April 1, 1964 and is an Arizona  
19 licensed mortgage banker.<sup>1</sup> It has operated as a private mortgage lender for residential property  
20 since its inception and in connection with commercial real estate since the late 1980s. Scott M.  
21 Coles ("Coles") acted as the CEO/Chairman of MLtd from 1997 until his death on June 2, 2008.  
22 The sole shareholder of MLtd is the SMC Revocable Trust U/T/A dated December 22, 1994, as  
23 amended ("SMC Trust").

24 17. MLtd originates, invests in, sells and services its own short-term real estate loans.

25  
26 <sup>1</sup>The Arizona Department of Financial Institutions filed Notice of Hearing to Revoke the mortgage banker's license of Mortgages Ltd. with the Office of Administrative Hearings as matter no. 09F-BD058-BNK on February 27, 2009. An administrative hearing has been scheduled for April 16, 2009.

1 MLtd's loans range from \$1 million to \$150 million, with an average term of 6 to 18 months, carry  
2 higher interest rates than traditional institutional lenders, and often are used as bridge financing.  
3 All of MLtd's loans are secured by real estate, including multifamily residential projects, office  
4 buildings, and mixed-use projects within Arizona.

5 18. As of June 23, 2008, MLtd had outstanding loans of approximately \$894 million in  
6 approximately sixty-six (66) real estate projects ("MLtd Loan" or "MLtd Loans").

7 19. The MLtd Loans are funded from the sale of the secured promissory notes to  
8 investors. The secured promissory notes are sold to investors through Mortgages Ltd. Securities,  
9 L.L.C. ("MLS"), a wholly owned subsidiary of MLtd. MLtd also uses its own funds for loans that  
10 it originates.

11 20. MLS, an Arizona limited liability company, was organized on February 1, 2001 and  
12 was registered as a securities dealer with the Commission on March 9, 2004. On December 31,  
13 2008, MLS terminated its registration with the Commission.

14 21. A portion of the MLtd Loans are made directly on behalf of itself and investors,  
15 where MLtd and its investors receive direct, "pass through" fractional loan and lien interests in real  
16 estate collateral (the "Pass Through Participation"). Each investor in the Pass Through  
17 Participation program individually acquires a participation interest in the loan or loans selected and  
18 signs an agency agreement with MLtd, which appoints MLtd as the investor's agent. The investor  
19 is assigned (i.e., endorsed) an interest in the promissory note evidencing the MLtd Loan, and a  
20 corresponding assignment of beneficial interest in the real estate collateral (i.e., first lien position  
21 deed of trust) is recorded.

22 22. HORIZON PARTNERS and RADICAL BUNNY were formed for the purpose of  
23 investing in the MLtd Pass Through Participation program through the use of pooled investor  
24 funds.

25 23. Investors learned of the HORIZON PARTNERS and RADICAL BUNNY  
26 investment opportunities from their accountant, HIRSCH and/or SHAH, or by "word of mouth"

1 from existing investors or their friends and/or family. Investors reside in Arizona and at least  
2 twenty-three other states and four foreign countries.

3 24. HIRSCH is a certified public accountant who has been licensed with the Arizona  
4 State Board of Accountancy since October 19, 1979. SHAH is a certified public accountant who  
5 has been licensed with the Arizona State Board of Accountancy since January 11, 1993. In or  
6 around September 2001, HIRSCH and SHAH became business partners conducting business as  
7 HIRSCH & SHAH CPA'S, LLC, an Arizona limited liability company.

8 25. HORIZON PARTNERS and RADICAL BUNNY are not, and have never been,  
9 registered as securities dealers with the Commission.

10 26. HIRSCH, B. WALDER, H. WALDER, and SHAH are not, and have never been,  
11 registered as securities salesmen with the Commission.

12 ***Horizon Partners: January 1998 through 2005***

13 27. From January 1998 until the fall of 2005, HORIZON PARTNERS invested in the  
14 MLtd Pass Through Participation program. All endorsements of the secured promissory notes and  
15 corresponding assignments of the beneficial interests in the deeds of trust were issued in the name  
16 of HORIZON PARTNERS and duly recorded.

17 28. From at least January 1998 through the fall of 2005, HORIZON PARTNERS and  
18 HIRSCH raised between \$25 and \$35 million from approximately 100 investors ("HP  
19 Participants") through the sale of limited liability company membership interests in HORIZON  
20 PARTNERS in order to participate in the MLtd Pass Through Participation program.

21 29. HORIZON PARTNERS did not register the offer and sale of the limited liability  
22 company interests with the Commission.

23 30. Until late 2005, HIRSCH represented to investors that HORIZON PARTNERS  
24 would then "invest" all or a part of the HP Participant's capital account into a specific loan  
25 pursuant to the investor's instruction or "Direction to Purchase" executed by the investor and  
26 HIRSCH on behalf of HORIZON PARTNERS. The Direction to Purchase authorized HIRSCH, as

1 the "purchaser's agent," to acquire an interest in a specific MLtd Loan. The Direction to Purchase  
2 also set forth the amount invested, the percent interest in the MLtd Loan that was represented by  
3 the HP Participant's investment, the annual "net"<sup>2</sup> interest rate to be paid to the HP Participant, the  
4 maturity date of the MLtd Loan, and the interest payment due date.

5 31. Until late 2005, as the MLtd Loans matured or were repaid, the HP Participants  
6 were given the following options: (a) receive a complete distribution of their principal amounts  
7 invested in the MLtd Loan; (b) "roll-over" all of their principal amounts invested in the MLtd Loan  
8 for participation in another MLtd Loan; (c) "roll-over" a portion of their principal amounts invested  
9 in the MLtd Loan for participation in another MLtd Loan and receive a distribution of their  
10 remaining principal amounts; or (d) "roll-over" all of their principal amounts invested in the MLtd  
11 Loan along with additional funds for participation in another MLtd Loan.

12 32. Beginning at a time when the number of HP Participants had substantially increased  
13 and continuing until late 2005, HORIZON PARTNERS imposed upon the HP Participants a  
14 management fee of one-quarter of one percent from the stated annual interest rate paid to  
15 HORIZON PARTNERS under the terms of the MLtd Loan. The management fee was assessed as  
16 interest payments on each of the MLtd Loans were made by MLtd, as the servicing agent, to  
17 HORIZON PARTNERS.

18 33. Until late 2005, HORIZON PARTNERS and HIRSCH made all investments in the  
19 MLtd Pass Through Participation program on behalf of the HP Participants, made all distributions  
20 of interest and/or principal to HP Participants, prepared and maintained all investment documents  
21 for each of the HP Participants, sent out quarterly account statements for each of the HP  
22 Participants, reviewed the loan summary sheets for each of the MLtd Loans in which HORIZON  
23 PARTNERS invested and provided them to potential and existing HP Participants for review, and  
24 issued an IRS Form 1065 ("K-1") to the HP Participants at the conclusion of each tax year. The HP  
25

26 <sup>2</sup> "Net" represented the difference between the stated annual interest rate being paid to HORIZON PARTNERS under the terms of the MLtd Loan and the reduced annual interest rate being paid by HORIZON PARTNERS to the HP Participants.

1 Participants completed "Application" forms and provided funds for and received distributions of  
2 principal and interest from their investments pursuant to Direction to Purchases and/or  
3 "Instructions for Maturing Funds."

4 34. As of December 2005, the minimum investment for each HP Participant in  
5 HORIZON PARTNERS was \$25,000.

6 ***Radical Bunny: June 1999 through 2005***

7 35. RADICAL BUNNY began investing in the MLtd Pass Through Participation  
8 program beginning in June 1999 and continued to do so until approximately December 2005. All  
9 endorsements of the secured promissory notes and corresponding assignments of the beneficial  
10 interest in the deeds of trust were issued in the name of RADICAL BUNNY and duly recorded.

11 36. From at least January 1, 2000 through approximately December 2005, RADICAL  
12 BUNNY, HIRSCH, B. WALDER, and SHAH raised at least \$40 million from investors ("RB  
13 Participants") through the sale of limited liability company membership interests in RADICAL  
14 BUNNY in order to participate in the MLtd Pass Through Participation program.

15 37. RADICAL BUNNY did not register the offer and sale of the limited liability  
16 company interests with the Commission.

17 38. Until late 2005, HIRSCH, B. WALDER, and SHAH represented to investors that  
18 RADICAL BUNNY would then "invest" all or a part of the RB Participant's capital account into a  
19 specific loan pursuant to the investor's instruction or "Direction to Purchase" executed by the  
20 investor and HIRSCH and/or a "managing member" on behalf of RADICAL BUNNY. The  
21 Direction to Purchase authorized HIRSCH and/or a "managing member," as the "purchaser's  
22 agent," to acquire an interest in a specific MLtd Loan. The Direction to Purchase also set forth the  
23 amount invested, the percent interest in the MLtd Loan that was represented by the RB  
24 Participant's investment, the annual "net"<sup>3</sup> interest rate to be paid to the RB Participant, the  
25 maturity date of the MLtd Loan, and the interest payment due date.

26 <sup>3</sup> "Net" is defined as the difference between the stated annual interest rate being paid to RADICAL BUNNY under the terms of the MLtd Loan and the reduced interest rate being paid by RADICAL BUNNY to the RB Participants.

1           39.     Until late 2005, as the MLtd Loans matured or were repaid, the RB Participants  
2 were given the following options: (a) receive a complete distribution of their principal amounts  
3 invested in the MLtd Loan; (b) "roll-over" all of their principal amounts invested in the MLtd Loan  
4 for participation in another MLtd Loan; (c) "roll-over" a portion of their principal amounts invested  
5 in the MLtd Loan for participation in another MLtd Loan and receive a distribution of the  
6 remaining principal amounts; or (d) "roll-over" all of their principal amounts invested in the MLtd  
7 Loan along with additional funds for participation in another MLtd Loan.

8           40.     Beginning at a time when the number of RB Participants had substantially increased  
9 and continuing until late 2005, RADICAL BUNNY imposed upon the RB Participants a  
10 management fee of one-quarter of one percent from the stated annual interest percentage rate paid  
11 to RADICAL BUNNY under the terms of the MLtd Loan. The management fee was assessed as  
12 interest payments on each of the MLtd Loans were made by MLtd, as the servicing agent, to  
13 RADICAL BUNNY.

14           41.     Until late 2005, RADICAL BUNNY, HIRSCH, B. WALDER, H. WALDER, and  
15 SHAH made all investments in the MLtd Pass Through Participation program on behalf of the RB  
16 Participants, made all distributions of interest and/or principal to RB Participants, prepared and  
17 maintained all investment documents for each of the RB Participants, sent out quarterly account  
18 statements for each of the RB Participants, reviewed the loan summary sheets for each of the MLtd  
19 Loans in which RADICAL BUNNY invested and provided them to potential and existing RB  
20 Participants for review, and issued an IRS Form 1065 ("K-1") to the RB Participants at the  
21 conclusion of each tax year. The RB Participants completed "Application" forms and provided  
22 funds for and received distributions of principal and interest from their investments pursuant to  
23 Direction to Purchases and/or "Instructions for Maturing Funds."

24           42.     As of December 2005, the minimum investment for each RB Participant in  
25  
26



1 RADICAL BUNNY was \$50,000.<sup>4</sup>

2 ***Horizon Partners and Radical Bunny: Late 2005 through June 2, 2008***

3 43. In late 2005, RADICAL BUNNY ceased investing in the MLtd Pass Through  
4 Participation program on behalf of the HP Participants and RB Participants, and instituted a new  
5 investment program in which RADICAL BUNNY would advance funds to MLtd to fund its loan  
6 programs to borrowers ("RB-MLtd Loan" or "RB-MLtd Loans").

7 44. RADICAL BUNNY did not register its new investment program with the  
8 Commission.

9 45. Under the new RADICAL BUNNY investment program, HORIZON PARTNERS  
10 would cease to operate effective December 31, 2005, and "any and all remaining investments" with  
11 HORIZON PARTNERS "would be rolled over" to the new RADICAL BUNNY investment  
12 program.

13 46. Effective December 1, 2005, as the MLtd Loans in which HORIZON PARTNERS  
14 or RADICAL BUNNY held a fractionalized interest under the MLtd Participation Pass Through  
15 program matured or were repaid, the HP Participants and/or RB Participants were given the  
16 following options: (a) receive a complete distribution of their principal amounts invested in the  
17 MLtd Loan; (b) "roll-over" all of their principal amounts invested in the MLtd Loan for  
18 participation in the new RADICAL BUNNY investment program; (c) "roll-over" a portion of their  
19 principal amounts invested in the MLtd Loan for participation in the new RADICAL BUNNY  
20 investment program and receive a distribution of their remaining principal amounts; or (d) "roll-  
21 over" all of their principal amounts invested in the MLtd Loan and add additional funds for  
22 participation in the new RADICAL BUNNY investment program.

23 47. Under the new RADICAL BUNNY investment program, investor ("Participant")  
24 funds were advanced to RADICAL BUNNY and held until a RB-MLtd Loan became available.

25  
26 <sup>4</sup> If a RB Participant had more than one investment account with RADICAL BUNNY (e.g., an individual account and an IRA account), then the total amount invested in all accounts had to total the minimum investment amount of \$50,000.

1 RADICAL BUNNY would then pool the Participants' monies and fund the RB-MLtd Loan. The  
2 loan period ranged between ninety days and eighteen months. Depending on the duration of the  
3 loan period, the stated interest rate of the RB-MLtd Loan ranged between eleven and fourteen  
4 percent per annum. Interest was to be paid to RADICAL BUNNY by MLtd on at least monthly  
5 basis. Participants would then receive their interest payments from RADICAL BUNNY on a  
6 monthly basis.

7 48. The minimum amount for participation for each Participant in the new RADICAL  
8 BUNNY investment program was \$50,000.<sup>5</sup>

9 49. RADICAL BUNNY imposed upon the Participants a management fee of two  
10 percent. The two percent represented the difference between the stated annual interest rate being  
11 paid to RADICAL BUNNY under the terms of the RB-MLtd Loan and the annual interest rate  
12 being paid by RADICAL BUNNY to the Participants. The management fee was assessed as  
13 interest payments were made by MLtd to RADICAL BUNNY.

14 50. Since at least November 2006, RADICAL BUNNY conducted semiannual meetings  
15 for its investors at the Orange Tree Resort in Scottsdale, Arizona ("Orange Tree Meetings") which  
16 included a dinner/luncheon and HIRSCH, B. WALDER, and SHAH presented a slide/PowerPoint  
17 presentation. HIRSCH, B. WALDER, SHAH and H. WALDER were also available to answer  
18 questions from investors. These meetings were conducted over a three-day period in order to  
19 accommodate all people who wanted to attend. Announcements were forwarded to the  
20 Participants. Included with the invitation was a response card requesting that RADICAL BUNNY  
21 be advised of how many people were going to attend. While the invitation stated that the purpose  
22 of the meeting was not to solicit new investors, no steps were taken in order to ensure that potential  
23 new investors did not attend.

24 51. RADICAL BUNNY, HIRSCH, B. WALDER, and SHAH represented to investors  
25

26 <sup>5</sup> If a RB Participant had more than one investment account with RADICAL BUNNY (e.g., an individual account and an IRA account), then the total amount invested in all accounts had to total the minimum investment amount of \$50,000.

1 that RADICAL BUNNY would "invest" the Participant's funds "in MLtd," which investment  
2 would be evidenced by a "secured" promissory note pursuant to the investor's instruction or  
3 "Direction to Purchase" executed by the investor and a "managing member" on behalf of  
4 RADICAL BUNNY. The Direction to Purchase authorized a "managing member," as the  
5 "purchaser's agent," to acquire an interest in a specific RB-MLtd Loan as well as set forth the  
6 amount invested, the percent interest in the loan that the investment amount represented, the annual  
7 "net"<sup>6</sup> interest rate to be paid to the Participant, the loan maturity date, and the interest due dates.

8 52. If a Participant desired to redeem his/her principal prior to the RB-MLtd Loan  
9 maturity date, RADICAL BUNNY imposed a redemption fee of an additional two percent above  
10 the stated "net" interest rate being paid to the Participant retroactive to the date of investment.

11 53. Sources of money used to honor Participant redemption requests included new  
12 investor funds, assets of RADICAL BUNNY, and personal funds of the HIRSCH, B. WALDER,  
13 H. WALDER and/or SHAH.

14 54. The current outstanding principal advances are evidenced by ninety-nine separate  
15 promissory notes executed by MLtd in favor of RADICAL BUNNY. As of July 18, 2008,  
16 RADICAL BUNNY is owed the aggregate principal amount of \$197,232,758.05 by MLtd.

17 55. Since at least December 2005, RADICAL BUNNY, HIRSCH, B. WALDER, H.  
18 WALDER, and SHAH made all distributions of interest and/or principal to the Participants,  
19 prepared and maintained all investment documents for each of the Participants, sent out quarterly  
20 account statements for each of the Participants, reviewed the loan summary sheets and other loan  
21 documentation for each of the MLtd Loans for which RB-MLtd Loan proceeds were to be used to  
22 fund, visited the real estate subject to the MLtd Loans, received and reviewed audited and  
23 unaudited financial statements of MLtd, and issued an IRS Form 1099-INT to the Participants at  
24 the conclusion of each tax year. The Participants completed various application forms and provided  
25

26 <sup>6</sup> "Net" is defined as the difference between the stated annual interest rate being paid to RADICAL BUNNY under the terms of the RB-MLtd Loan and that reduced interest rate amount being paid by RADICAL BUNNY to the Participants.

1 funds for and received distributions of principal and interest from their investments pursuant to  
2 Directions to Purchase and/or "Instructions for Maturing Funds."

3 56. As of December 31, 2006, none of the HP Participants held a membership interest in  
4 HORIZON PARTNERS with the exception of HIRSCH, B. WALDER and H. WALDER.

5 57. As of December 31, 2006, none of the RB Participants held a membership interest  
6 in RADICAL BUNNY with the exception of HIRSCH as Trustee of the Hirsch Family Trust, B. H.  
7 WALDER, and SHAH and Modhavi Shah.

8 58. RADICAL BUNNY is currently owed the principal amount of \$3,748,000 from  
9 borrowers as a result of its investments in the MLtd Pass Through Participation program.

10 59. Since at least January 2000, RADICAL BUNNY and HIRSCH represented to  
11 offerees and investors that he was a member and manager of RADICAL BUNNY. As a manager  
12 of RADICAL BUNNY, HIRSCH received a management fee for the performance of certain  
13 business activities of RADICAL BUNNY including meeting with potential investors to discuss the  
14 investment program, serving as a contact for existing investors, collecting investment checks from  
15 investors, attending and making presentations at the Orange Tree investor meetings, participating  
16 in meetings with RADICAL BUNNY attorneys, acting as a signatory on the RADICAL BUNNY  
17 bank accounts, preparing income tax returns of RADICAL BUNNY, preparing financial statements  
18 of RADICAL BUNNY and negotiating the RB-MLtd Loans with Coles.

19 60. Since at least 2005, RADICAL BUNNY and SHAH represented to offerees and  
20 investors that he was a "managing member" of RADICAL BUNNY. As a "managing member" of  
21 RADICAL BUNNY, Shah received a management fee for the performance of certain business  
22 activities of RADICAL BUNNY including meeting with potential investors to discuss the  
23 investment program, serving as a contact for existing investors, collecting investment checks from  
24 investors, attending and making presentations at the Orange Tree investor meetings, participating  
25 in meetings with RADICAL BUNNY attorneys, acting as a signatory on the RADICAL BUNNY  
26 bank accounts, preparing income tax returns of RADICAL BUNNY, and preparing financial

1 statements of RADICAL BUNNY.

2         61.     Since June 2005, RADICAL BUNNY and B. WALDER represented to offerees and  
3 investors that she was a “managing member” of RADICAL BUNNY. As a “managing member” of  
4 RADICAL BUNNY, B. WALDER received a management fee for the performance of certain  
5 business activities of RADICAL BUNNY including meeting with potential investors to discuss the  
6 investment program, serving as the primary contact with existing investors, collecting and  
7 depositing investment checks from investors, setting up IRA accounts for investors to participate in  
8 RADICAL BUNNY investment opportunities, attending and making presentations at the Orange  
9 Tree investor meetings, participating in meetings with RADICAL BUNNY attorneys, participating  
10 in weekly meetings with MLtd management, acting as a signatory on the RADICAL BUNNY bank  
11 accounts, and making distributions to investors.

12         62.     Since September 2005, RADICAL BUNNY and H. WALDER represented to  
13 offerees and investors that he was a “managing member” of RADICAL BUNNY. As a “managing  
14 member” of RADICAL BUNNY, H. WALDER received a management fee for the performance of  
15 certain business activities of RADICAL BUNNY including collecting and depositing investment  
16 checks from investors, assisting in setting up IRA accounts for investors to participate in  
17 RADICAL BUNNY investment opportunities, attending the Orange Tree investor meetings,  
18 participating in meetings with RADICAL BUNNY attorneys, participating in weekly meetings  
19 with MLtd management, serving as a signatory on the RADICAL BUNNY bank accounts,  
20 maintaining bank account records, preparing distributions to investors, maintaining the IT system  
21 of RADICAL BUNNY, and serving as a contact for MLtd for the funding of the RB-MLtd Loans.

22         63.     In the fourth quarter of 2006, RADICAL BUNNY and HIRSH were advised by  
23 MLtd representatives that RADICAL BUNNY may be engaged in the offer and sale of  
24 unregistered securities and that they should seek legal advice regarding the conduct of the business  
25 activities of RADICAL BUNNY.

26         64.     In late January 2007, RADICAL BUNNY, HIRSCH, B. WALDER, H. WALDER

1 and SHAH were advised by an attorney whom they interviewed, but did not ultimately retain, that  
2 they "could not legally operate RADICAL BUNNY without a license" because they were  
3 "engaged in a regulated activity" for which a license is most likely required. This attorney did not  
4 render a legal opinion regarding whether or not RADICAL BUNNY and/or HIRSCH, B.  
5 WALDER, H. WALDER and SHAH would be required to register as a securities dealer or  
6 salesmen, obtain an investment adviser or investment adviser representative license, and/or obtain a  
7 mortgage banker's license in order to continue to conduct the business of RADICAL BUNNY.  
8 However, the attorney cautioned RADICAL BUNNY, HIRSCH, B. WALDER, H. WALDER and  
9 SHAH that they should be "concerned" because any complaint to securities or banking regulators  
10 and/or an audit of MLtd "could expose them" to liability engaging in unregistered or unlicensed  
11 activities in violation of state law.

12 65. In the first quarter 2007, RADICAL BUNNY, HIRSCH, B. WALDER, H.  
13 WALDER and SHAH were advised by their attorneys that they may be engaged in the offer and  
14 sale of unregistered securities; however, they continued to raise funds from investors.

15 66. On or about May 2, 2007, RADICAL BUNNY, HIRSCH, B. WALDER, H.  
16 WALDER and SHAH were advised by their attorneys that they were, in fact, engaged in the offer  
17 and sale of unregistered securities, and should stop raising funds under their current investment  
18 program; however, they continued to raise funds from investors.

19 67. Between January 1, 2007 and April 30, 2008, RADICAL BUNNY, HIRSCH, B.  
20 WALDER and SHAH raised at least an additional \$73 million from investors.

21 68. From at least the last quarter of 2006, RADICAL BUNNY, HIRSH, B. WALDER,  
22 H. WALDER and SHAH failed to advise offerees and Participants that they had or were engaged  
23 in unregistered securities offerings in violation of the Securities Act.

24 69. From at least December 2005, RADICAL BUNNY, HIRSH, B. WALDER, and  
25 SHAH represented to offerees and Participants that the Participants were investing "in MLtd notes  
26 and deeds of trust" when, in fact, the Participants were investing in RADICAL BUNNY.

1           70.     From at least December 2005, RADICAL BUNNY, HIRSCH, B. WALDER, and  
2 SHAH represented to offerees and Participants that the RB-MLtd Loans were evidenced by  
3 “secured” promissory notes and/or collateralized by [all of] the assets of MLtd and the personal  
4 guaranty of Coles. However, although form UCC-1s were filed with the Arizona Secretary of  
5 State, at no time was there in existence a security agreement executed by MLtd in favor of  
6 RADICAL BUNNY. In addition, the promissory notes evidencing the RB-MLtd Loans did not  
7 refer to any form of collateral that secured the repayment of MLtd loan obligation to RACICAL  
8 BUNNY.

9           71.     In the first quarter of 2007, RADICAL BUNNY, HIRSCH, B. WALDER, H.  
10 WALDER and SHAH were advised by the attorneys for RADICAL BUNNY that the security  
11 interest in the collateral for the repayment of the RB-MLtd Loans was not, and had never been,  
12 properly perfected. However, RADICAL BUNNY, HIRSCH, B. WALDER and SHAH continued  
13 to represent to investors that the RB-MLtd Loans were secured despite being advised by their  
14 attorneys to the contrary.

15           72.     From at least the first quarter of 2007, H. WALDER failed to advise offerees and  
16 Participants that the RB-MLtd Loans were unsecured.

17           73.     From at least December 2005, RADICAL BUNNY, HIRSCH, B. WALDER and  
18 SHAH represented to investors that there were four conditions precedent to funding the RB-MLtd  
19 Loans: (1) the real estate must be located in Arizona; (2) the loan-to-value ratio must be at least 65  
20 percent (3) the loan must be collateralized by a deed of trust in first lien position; and (4) loans  
21 could not be to used construct single family residences. “No exceptions.”

22           74.     From at least December 2005, RADICAL BUNNY, HIRSCH, B. WALDER, H.  
23 WALDER, and SHAH failed to advise offerees and Participants that promissory notes evidencing  
24 the RB-MLtd Loans did not contain any language that limited the use of the RB-MLtd Loan  
25 proceeds to funding of MLtd Loans.

26           75.     When questioned by at least one potential investor, B. WALDER stated that the RB-

1 MLtd Loan proceeds would not be used for the construction of residential condominiums.  
2 However, upon information and belief, RB-MLtd Loan proceeds were used to fund loans for the  
3 construction of residential condominiums.

4 76. From at least December 2005, RADICAL BUNNY, HIRSCH, B. WALDER, and  
5 SHAH represented to offerees and Participants that repayment of the RB-MLtd Loans was  
6 personally guaranteed by Coles. However, RADICAL BUNNY, HIRSCH, B. WALDER, H.  
7 WALDER, and SHAH never ascertained the nature and/or value of Coles' personal assets.

8 77. From January 1998 until June 2, 2008, RADICAL BUNNY and HORIZON  
9 PARTNERS raised approximately \$300 million from investors.

10 78. As of November 10, 2008, at least \$189,800,867.00 is owed by RADICAL BUNNY  
11 to least 900 investors.

#### 12 IV.

#### 13 VIOLATION OF A.R.S. § 44-1841

#### 14 (Offer or Sale of Unregistered Securities)

15 79. From at least January 1998 until on or about December 1, 2005, Respondents  
16 HORIZON PARTNERS and HIRSCH offered or sold securities in the form of investment contracts,  
17 within or from Arizona.

18 80. From at least January 2000 until on or about June 2, 2008, Respondents RADICAL  
19 BUNNY and HIRSCH offered or sold securities in the form of investment contracts, within or from  
20 Arizona.

21 81. From at least 2005 until on or about June 2, 2008, Respondent SHAH offered or sold  
22 securities in the form of investment contracts within or from Arizona.

23 82. From at least June 2005 until on or about June 2, 2008, Respondent B. WALDER  
24 offered or sold securities in the form of investment contracts within or from Arizona.

25 83. The securities referred to above were not registered pursuant to Articles 6 or 7 of the  
26 Securities Act.



84. This conduct violates A.R.S. § 44-1841.

**V.**

**VIOLATION OF A.R.S. § 44-1842**

**(Transactions by Unregistered Dealers or Salesmen)**

85. Respondents HORIZON PARTNERS, RADICAL BUNNY, HIRSCH, SHAH, and B. WALDER offered or sold securities within or from Arizona while not registered as dealers or salesmen pursuant to Article 9 of the Securities Act.

86. This conduct violates A.R.S. § 44-1842.

**VI.**

**VIOLATION OF A.R.S. § 44-1991**

**(Fraud in Connection with the Offer or Sale of Securities)**

87. In connection with the offer or sale of securities within or from Arizona, Respondents RADICAL BUNNY, HIRSCH, SHAH, B. WALDER and H. WALDER directly or indirectly: (i) employed a device, scheme, or artifice to defraud; (ii) made untrue statements of material fact or omitted to state material facts that were necessary in order to make the statements made not misleading in light of the circumstances under which they were made; or (iii) engaged in transactions, practices, or courses of business that operated or would operate as a fraud or deceit upon offerees and investors. The conduct of Respondents RADICAL BUNNY, HIRSCH, B. WALDER, H. WALDER and SHAH includes, but is not limited to, the following:

a) From at least December 2005, RADICAL BUNNY, HIRSH, B. WALDER, and SHAH represented to offerees and Participants that the Participants were investing "in MLtd notes and deeds of trust" when, in fact, the Participants were investing in RADICAL BUNNY;

b) From at least December 2005, RADICAL BUNNY, HIRSCH, B. WALDER, and SHAH represented to offerees and Participants that the RB-MLtd Loans were evidenced by "secured" promissory notes and/or collateralized by [all of] the assets of MLtd and the personal guaranty of Coles when, in fact, the security interest was never properly perfected;

1 c) From at least the first quarter of 2007, H. WALDER failed to inform offerees  
2 and Participants that the RB-MLtd Loans were unsecured;

3 d) From at least December 2005, RADICAL BUNNY, HIRSCH, B.  
4 WALDER, H. WALDER, and SHAH failed to inform offerees and Participants that the nature  
5 and/or value of Coles' personal assets were never ascertained;

6 e) From at least December 2005, RADICAL BUNNY, HIRSCH, B.  
7 WALDER, H. WALDER, and SHAH failed to advise offerees and Participants that promissory  
8 notes evidencing the RB-MLtd Loans did not contain any language that limited the use of the RB-  
9 MLtd Loan proceeds to funding of MLtd Loans; and

10 f) From at least the last quarter of 2006, RADICAL BUNNY, HIRSH, B.  
11 WALDER, H. WALDER, and SHAH failed to advise offerees and Participants that they had been  
12 told by the attorneys for RADICAL BUNNY that they had or were engaged in unregistered  
13 securities offerings in violation of the Securities Act.

14 88. This conduct violates A.R.S. § 44-1991.

15 89. HIRSCH, B. WALDER, H. WALDER, and SHAH directly or indirectly controlled  
16 RADICAL BUNNY within the meaning of A.R.S. § 44-1999. Therefore, HIRSCH, B. WALDER,  
17 H. WALDER, and SHAH are jointly and severally liable to the same extent as RADICAL BUNNY  
18 for its violations of A.R.S. § 44-1991.

## 19 VII.

### 20 REQUESTED RELIEF

21 The Division requests that the Commission grant the following relief:

22 1. Order Respondents to permanently cease and desist from violating the Securities  
23 Act, pursuant to A.R.S. § 44-2032;

24 2. Order Respondents to take affirmative action to correct the conditions resulting from  
25 Respondents' acts, practices, or transactions, including a requirement to make restitution pursuant to  
26 A.R.S. § 44-2032;

4. Order that the marital communities of Respondents and Respondent Spouses be subject to any order of restitution, rescission, administrative penalties, or other appropriate affirmative action pursuant to A.R.S. § 25-215; and

## VIII.

Each respondent including Respondent Spouses may request a hearing pursuant to A.R.S. § 44-1972 and A.A.C. R14-4-306. **If a Respondent or a Respondent Spouse requests a hearing, the requesting respondent must also answer this Notice.** A request for hearing must be in writing and received by the Commission within 10 business days after service of this Notice of Opportunity for Hearing. The requesting respondent must deliver or mail the request to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007. Filing instructions may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at <http://www.azcc.gov/divisions/hearings/docket.asp>.

If a request for a hearing is timely made, the Commission shall schedule the hearing to begin 20 to 60 days from the receipt of the request unless otherwise provided by law, stipulated by the parties, or ordered by the Commission. If a request for a hearing is not timely made the Commission may, without a hearing, enter an order granting the relief requested by the Division in this Notice of Opportunity for Hearing.

Persons with a disability may request a reasonable accommodation such as a sign language interpreter, as well as request this document in an alternative format, by contacting Shaylin A. Bernal, ADA Coordinator, voice phone number 602/542-3931, e-mail [sabernal@azcc.gov](mailto:sabernal@azcc.gov). Requests should be made as early as possible to allow time to arrange the accommodation.

**IX.****ANSWER REQUIREMENT**

Pursuant to A.A.C. R14-4-305, if a Respondent or a Respondent Spouse requests a hearing, the requesting respondent must deliver or mail an Answer to this Notice of Opportunity for Hearing to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007, within 30 calendar days after the date of service of this Notice. Filing instructions may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at <http://www.azcc.gov/divisions/hearings/docket.asp>.

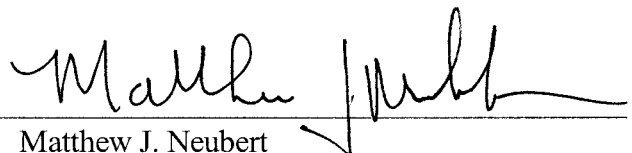
Additionally, the answering respondent must serve the Answer upon the Division. Pursuant to A.A.C. R14-4-303, service upon the Division may be made by mailing or by hand-delivering a copy of the Answer to the Division at 1300 West Washington, 3<sup>rd</sup> Floor, Phoenix, Arizona, 85007, addressed to Julie Coleman, Chief Counsel of Enforcement.

The Answer shall contain an admission or denial of each allegation in this Notice and the original signature of the answering respondent or respondent's attorney. A statement of a lack of sufficient knowledge or information shall be considered a denial of an allegation. An allegation not denied shall be considered admitted.

When the answering respondent intends in good faith to deny only a part or a qualification of an allegation, the respondent shall specify that part or qualification of the allegation and shall admit the remainder. Respondent waives any affirmative defense not raised in the Answer.

The officer presiding over the hearing may grant relief from the requirement to file an Answer for good cause shown.

Dated this 12 day of March, 2009.

  
Matthew J. Neubert  
Director of Securities

(JC)